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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/648,993	08/27/2003	David J. Schneider	P755-2/HSC'H 2 00007	4365
27885	7590	10/09/2009		
FAY SHARPE LLP 1228 Euclid Avenue, 5th Floor The Halle Building Cleveland, OH 44115			EXAMINER ANDERSON, JAMES D	
			ART UNIT	PAPER NUMBER
			1614	
			MAIL DATE	DELIVERY MODE
			10/09/2009 PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/648,993

Applicant(s)

SCHNEIDER, DAVID J.

Examiner

JAMES D. ANDERSON

Art Unit

1614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 July 2009.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 43-48 and 50 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 43-48 and 50 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Formal Matters

Applicants' response and amendments to the claims, filed 7/6/2009, are acknowledged and entered. Claims 43-48 and 50 are pending and under examination.

Response to Arguments

Applicants' arguments have been fully and carefully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The rejection of claims 43-48 and 50 under 35 U.S.C. 102(e) as being anticipated by Schneider (USP No. 6,749,804), is **withdrawn** in light of Applicants' arguments. Applicant is correct that the rejection over Schneider requires the reference date be the filing date of the provisional application filed October 30, 2000. The Examiner is in agreement with Applicant that 60/243,798 does not support the subject matter relied on by the Examiner in making the 35 U.S.C. 102(e) rejection of claims 43-48 and 50.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1614

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 43-48 and 50 remain rejected under 35 U.S.C. 103(a) as being unpatentable over **Arsem** (USP No. 2,472,361; Issued June 7, 1949) and **Marks *et al.*** (USP No. 2,817,621; Issued Dec. 24, 1957) in view of **Katzen** (USP No. 4,369,199; Issued Jan. 18, 1983).

The instant claims are drawn to treating an animal habitat with trichloromelamine such that the pH is lowered to less than 5. Applicants disclose that such treatment has “indirect insecticide properties” and thus can be used to control Darkling beetles.

Arsem discloses the claimed trichloromelamine (Table at col. 7) and teaches that highly halogenated substances such as trichloromelamine are useful as disinfectants and bleaching agents (col. 7, lines 25-35). The invention of Arsem is directed to methods of making trichloromelamine and thus does not disclose treating animal habitats with the compounds of the invention.

Marks discloses compositions for germicidal or disinfecting purposes comprising N-chloro compounds and iodide (col. 1, lines 16-21; col. 2, lines 34-49). Trichloromelamine is a particularly preferred N-chloro compound for use as a germicidal or disinfectant (col. 5, lines 26-27). Marks discloses that the germicidal and disinfectant compositions are preferably employed at a **pH below 5** by using buffering agents such as citrate in of an acid salt (col. 5, line 74 to col. 6, line 25). Also see Example I wherein a composition comprising trichloromelamine, arylalkyl sulfonate, citric acid, monosodium dihydrogen phosphate, and potassium iodide is disclosed. Marks discloses a range of concentration of disinfectant in aqueous solution so as to provide from **50 to 200 ppm** of available chlorine (col. 9, line 70 to col. 10, line 5).

Thus, both Arsem and Marks disclose trichloromelamine as a suitable disinfectant and Marks further discloses the use of compositions comprising trichloromelamine as germicides. Neither Arsem nor Marks discloses treating animal habitats with trichloromelamine.

However, Katzen discloses treating animal or poultry waste contained in a dropping pit or sedimentation tank of an animal or poultry confinement or holding pen with a sufficient amount of an acid to achieve and maintain the animal or poultry waste at a **pH of about 4** (Abstract).

Also, Katzen discloses treating animal or poultry bedding with an acid to maintain a pH of about 4 (id.). The treatment eliminates the problems of giving off of unhealthy gases and the growth of pathogens in the environment (Abstract; col. 2, lines 28-33; col. 4, lines 39-45).

It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use a composition comprising trichloromelamine and citric acid as disclosed in Marks to treat animal waste and/or bedding so as to maintain the waste and/or bedding at a pH of about 4 as taught in Katzen. The skilled artisan would expect that such treatment would not only eliminate unhealthy gases and the growth of pathogens as taught in Katzen, but would also have disinfectant and germicidal properties as taught in Arsem and Marks. It is well established in the art that animal housings and bedding are in need of disinfecting and thus treatment of such housings and bedding with a disinfectant solution would have been obvious to one skilled in the art at the time the invention was made. Because compositions comprising trichloromelamine were known to have both disinfectant and germicidal properties when used at or below a pH of 5, the skilled artisan would have been motivated to use such compositions for treating an animal habitat, including waste and bedding as disclosed in Katzen.

Marks discloses the use of compositions comprising trichloromelamine as disinfectants and germicides, wherein the compositions are maintained at a pH below 5. As such, use of such compositions in the methods of reducing the pH of animal waste and/or bedding to below about 4 as taught in Katzen would have been *prima facie* obvious to one skilled in the art at the time the invention was made.

With regard to claim 47, which recites treatment by dusting the habitat with powdered trichloromelamine, the skilled artisan would expect that dusting a habitat with trichloromelamine would maintain the disinfectant and germicidal properties of trichloromelamine as taught in Arsem and Marks. As such, this method of application of trichloromelamine is not seen as a patentable distinction over the cited prior art.

Response to Arguments

Applicant argues that the Examiner “appears to have applied improper hindsight reasoning”. In particular, Applicant argues that none of the cited references discuss the control

of Darkling beetles. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Applicant further argues that because the instant claims are method claims, the preamble should be considered a limitation of the claim. The Examiner is not persuaded by this argument and submits that the preamble of the claims merely recites an additional benefit of applying trichloromelamine to animal habitats as suggested and motivated by the cited prior art. The active method step of the claims simply requires treating the animal habitat with an effective amount of trichloromelamine such that the pH of the habitat is lowered to less than 5. There is no requirement in the claims that Darkling beetles be present in the animal habitat. In fact, Applicant acknowledges that application of trichloromelamine when used to control odors in an animal habitat (*i.e.*, "in accordance with this invention") has indirect insecticide properties (page 9). As disclosed by Applicant, by application of trichloromelamine to a habitat the pH is lowered to less than 5, a point at which the *formation* and growth of the Darkling beetle will not occur (paragraph bridging pages 9 and 10).

The prior art suggests and motivates treating animal habitats with trichloromelamine to treat animal waste and/or bedding so as to maintain the waste and/or bedding at a pH of about 4. As such, the treatment of animal habitats as suggested and motivated by the cited prior art will naturally result in "indirect insecticide properties" as disclosed by Applicant.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAMES D. ANDERSON whose telephone number is (571)272-9038. The examiner can normally be reached on MON-FRI 9:00 am - 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/James D Anderson/
Examiner, Art Unit 1614